

**Compiler's note: A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).**

**Technical Amendment  
April 2, 2021**

**9 KAR 1:030. Administrative proceedings.**

RELATES TO: KRS 11A.080, 11A.100, 13B.030 - 13B.050, 13B.070, 13B.090

STATUTORY AUTHORITY: KRS 11A.080, 11A.100, 11A.110(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.080(4)(b) authorizes the commission to initiate an administrative hearing to determine whether there has been a violation of KRS Chapter 11A. KRS 11A.100(1)(a) exempts the commission from KRS 13B.030(2)(b). KRS 11A.100(1)(b) exempts the commission from KRS 13B.050(1), (2), and (3) when a party fails to file an answer or otherwise participate. KRS 11A.110(3) requires the commission to promulgate administrative regulations to implement KRS Chapter 11A. This administrative regulation establishes procedures to govern administrative proceedings, the designation of hearing officers for the commission, and when a party fails to participate in an administrative proceeding.

Section 1. Definitions. (1) "Commission" means the Executive Branch Ethics Commission established by KRS 11A.060.

(2) "Commission secretary" means the employee of the commission designated pursuant to KRS 11A.070 to designate hearing officers.

(3) "Executive director" means the executive director appointed by the commission pursuant to KRS 11A.070.

(4) "Initiating order" means the document issued by the commission to initiate an administrative proceeding to determine whether there has been a violation as provided by KRS 11A.080(4)(b).

Section 2. Initiating Order. (1) To initiate an administrative proceeding, the commission shall issue an initiating order to the alleged violator, who shall be referred to as the respondent during the course of the administrative proceeding.

(2) The initiating order shall:

(a) Be served on the respondent by certified mail, return receipt requested, or registered mail sent to the last known address of the respondent, or by personal service. Service by certified or registered mail shall be complete upon the date on which the commission receives the return receipt or the returned notice;

(b) Include the information required by KRS 13B.050(3), except for the information required in KRS 13B.050(3)(a) and (b);

(c) State that all material submitted to the commission by the respondent or his attorney shall be addressed to the commission;

(d) State the deadline for submitting an answer and the ramifications of failing to file an answer as provided in Section 4 of this administrative regulation; and

(e) State that the procedural schedule for the proceedings will be set by a subsequent order after the designation of a hearing officer.

Section 3. Answer. (1) The respondent shall file a written answer to the initiating order with the commission within twenty (20) days of service of the initiating order.

(2) The answer shall be filed by the:

- (a) Respondent, if he has not retained counsel; or
- (b) Respondent's attorney, if he has retained counsel.
- (3) The answer shall be signed by the respondent or by counsel for respondent.
- (4) The respondent may request additional time in which to file an answer. The executive director may grant the respondent an additional twenty (20) days in which to file an answer.
- (5) If the respondent requests additional time to file an answer beyond the additional twenty (20) days, the request shall be reviewed by the commission at its next regularly scheduled meeting. The commission may grant additional time to file an answer with good cause shown.

Section 4. Default. ~~[(4)]~~ If the respondent fails to file a timely answer, then the commission may:

- ~~(1)[(a)]~~ Accept the failure to answer as an admission of the allegations in the initiating order;
- ~~(2)[(b)]~~ Find by clear and convincing evidence pursuant to KRS 11A.100(3) that the respondent has engaged in the alleged conduct in violation of KRS Chapter 11A;
- ~~(3)[(c)]~~ Enter a final order of default against the respondent; and
- ~~(4)[(d)]~~ Levy the appropriate possible penalty allowed under KRS 11A.100(3).

Section 5. Counsel. (1) If a respondent has retained counsel, the attorney shall file an entry of appearance with the commission.

(2) If a respondent has retained counsel, notices, correspondence, and orders relating to the administrative proceeding shall thereafter be transmitted to the attorney instead of the respondent.

Section 6. Assignment of a Hearing Officer. (1) If the respondent files a timely answer, then the commission shall designate a hearing officer.

(2) The commission shall designate a roster of hearing officers as provided by KRS 13B.030(2)(a) and as dictated by KRS Chapter 45A.

(3) A person qualified to serve as a hearing officer for the commission shall:

- (a) Maintain the qualifications required by KRS 13B.040;
- (b) Be an attorney in good standing with the Kentucky Bar Association or otherwise have approval by the Kentucky Bar Association to practice law in the Commonwealth of Kentucky;
- (c) Demonstrate knowledge of KRS Chapter 11A by having served as an ethics officer, having previously served as a member or staff of the commission, or attending or participating in trainings offered by the commission on the requirements of KRS Chapter 11A;
- (d) Not be a current member or staff of the commission; and
- (e) Not be under the jurisdiction of the commission.

(4) Once the roster of hearing officers is established, the commission secretary shall randomly assign administrative proceedings initiated by the commission pursuant to KRS 11A.080(4)(b) to a hearing officer from the roster of hearing officers, unless otherwise directed by the commission.

Section 7. Hearing Officer. (1) After the hearing officer is designated by the commission, the hearing officer shall within ten (10) days of the designation send notice to the parties of the date and time of the first telephonic prehearing conference.

(2) The hearing officer shall follow the requirements of KRS Chapter 13B for the conduct of administrative hearings, except as provided in KRS 11A.100 for the burden of proof where the higher standard of proof is required as dictated by KRS 13B.090(7).

Section 8. Settlement. (1) At any time during the proceedings, the commission's counsel

may enter into mediation or informal proceedings pursuant to KRS 13B.070 with the respondent.

(2) An agreed order or settlement reached through this process shall be reviewed by the commission and, upon approval by the commission, shall be signed by the commission and the respondent.

(3) The commission shall not approve a settlement that provides for the confidentiality of:

- (a) The existence of the settlement; or
- (b) Any of the terms of the settlement.

**Section 9.Ex Parte Communications.** Once an administrative proceeding has commenced, the commission, its executive director, commission counsel, the respondent, respondent counsel or other person acting on behalf of the respondent shall not initiate, participate in, or consider ex parte communications concerning the subject matter of a hearing or a related issue of fact or law, except upon notice and opportunity for all parties to participate.

**Section 10.Record to be Maintained.** (1) The hearing shall be transcribed by a court stenographer or by means of electronic media, such as videotaping.

(2) A transcript or electronic media copy of the testimony taken during the hearing shall:

- (a) Be kept by the commission;
- (b) Be available to the respondent upon request and payment of the appropriate fee; and
- (c) Be available to all commission members.

(3) Any documents or exhibits introduced into evidence shall be kept with the transcript or copy of the electronic media recording of the hearing or as ordered by the hearing officer. (19 Ky.R. 2349; eff. 6-7-93; Am. 21 Ky.R. 2517; 22 Ky.R. 26; eff. 7-6-95; 25 Ky.R. 884; 1577; eff. 1-19-1999; 31 Ky.R. 376; 697; eff. 11-5-2004; 45 Ky.R. 377; eff. 10-24-2018; TAm eff. 4-2-2021.)